



April 8, 2013

Steve Smith
Principal Safety Engineer, Cal/OSHA
Department of Industrial Relations
#1901 - 1515 Clay St.
Oakland California 94612
E-mail: ssmith@dir.ca.gov

MARY KAY HENRY
International President

ELISEO MEDINA
International Secretary-Treasurer

KIRK ADAMS
Executive Vice President

MICHAEL P. FISHMAN
Executive Vice President

GERRY HUDSON
Executive Vice President

EILEEN KIRLIN
Executive Vice President

VALARIE LONG
Executive Vice President

TOM WOODRUFF
Executive Vice President

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1800 Massachusetts Ave, NW
Washington, DC 20036

202.730.7000
TDD: 202.730.7481
www.SEIU.org

Re: Globally Harmonized System (GHS) update to Section 5194, Hazard Communication

Dear Mr. Smith:

We appreciate this opportunity to provide comments to the Cal/OSHA Advisory Committee considering changes to the state's Hazard Communication Standard and other Title 8 standards, as a result of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

Members of the Service Employees International Union (SEIU) have long been concerned with getting, and sustaining, the right-to-know about chemical hazards in California and across the United States. Federal and State OSHA Hazard Communications regulations are a key part of that right-to-know.

SEIU represents 700,000 members in California who work in a wide variety of private and public jobs throughout the state. Many of our members working in healthcare and building services have frequent exposure to hazardous materials.

Some of the proposed GHS changes offer significant improvements to the Hazard Communication for California workers and their employers. For example, the standardization of Safety Data Sheets (SDSs) and labels provided by manufacturers will make it easier for employers and employees to understand and use the information. We support the GHS goal in classifying and labeling chemicals is to improve -- not reduce -- the level of protection.

Our overall position on California's adoption of the GHS update to its existing hazard communication standard is that Cal/OSHA must not weaken existing protections for workers in its harmonizing effort. We want to uphold the spirit and principles of the GHS: provide more information to protect workers. We support Cal/OSHA's efforts to promulgate language that goes beyond the federal provisions and below we provide additional comments and justification on three specific areas for discussion at this advisory meeting.

California employers would not be impacted by these three issues, which would only apply to chemical manufacturers, distributors and importers. Employers would continue to rely on the information provided by chemical manufacturers through Safety Data Sheets (SDSs) and labels, as has been the requirement under the existing Hazard Communication for more than twenty-five years.

1. Source Lists

Under federal OSHA's prior hazard communication standard, and California's existing regulation, source lists of chemicals were/are used for the purpose of performing hazard determination or classification, by treating all chemicals on these lists as hazardous, carcinogens, or potential carcinogens. These lists include federal OSHA's toxic and hazardous substances found in 29 CFR Part 1910, subpart Z; ACGIH's Threshold Limit Values for Chemical Substances; the National Toxicology Program (NTP) and International Agency for Research on Cancer (IARC) lists of carcinogens. In addition, California's hazard communication standard included the list of hazardous substances prepared by the Director pursuant to labor Code section 6328 (the "Director's List").

SEIU believes that Cal/OSHA should retain the source lists that are currently used in their rule in order to maintain existing worker protections. Each of these source lists of chemicals are well known, widely used, and fully respected as authoritative determinations of chemicals that are hazardous or carcinogenic to humans. These lists have been and are prepared using weight of the evidence approaches, and it is appropriate and proper for Cal/OSHA to consider these determinations as presumptively meeting the GHS weight of the evidence criteria. Indeed, it is entirely inappropriate to allow chemical manufacturers and employers to ignore or override these determinations.

2. One Positive Scientifically Valid Study

Cal/OSHA proposes to retain language from its existing standard for classifying a health hazard that includes "evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles". Unfortunately, Federal OSHA's GHS update deleted the "one positive study" criteria and replaced it instead with a weight of the evidence determination approach that is used by the GHS.

SEIU supports the Cal/OSHA intention to retain the one positive study requirement in its GHS update because it (a) it is consistent with GHS; (b) maintains existing worker protections; and (c) it is as effective as the federal standard.

Retaining the one positive study requirement maintains existing worker protections. The current Cal/OSHA standard includes the use of one positive study for health hazard determination. Its removal from a final updated rule would weaken worker protections by withholding the information from workers and employers. If the chemical is demonstrated to pose an adverse health consequence to exposed workers, it is vitally important that workers and employers, have that information so that protective measures can be implemented. If that information is withheld, and protective measures are not used, workers will bear the impact with an adverse consequence. The information on one positive study, could, at least be listed on the additional information

section of the Safety Data Sheet (section 16) and the adverse health impact noted as well as including the chemical in the listing of the ingredients on the label.

3. Statement Regarding Testing

Cal/OSHA has included in its proposed GHS update the words that manufacturers, importers or employers who do classify hazards are to use “available scientific literature and other evidence” (language proposed at Section 5194(d)(2)). This is the same language in the new federal OSHA GHS update standard. However, Cal/OSHA has indicated for this April 9, 2013 advisory meeting that it wishes to discuss subsection (d)(2) regarding testing.

While the current federal standard does not require testing to be performed to provide hazard information that is not available, nothing in the existing federal rule would prohibit a manufacturer, importer, or employer from conducting testing on possible hazardous properties (health or physical hazards) of a chemical where such information was not available. Likewise, GHS also does not require testing to be performed. But GHS itself does not prohibit testing either. In fact, GHS specifically allows for Competent Authorities to require additional or updated information to supplement that obtained from available sources .

As a Competent Authority, we believe Cal/OSHA would have a justification to add some testing requirements in section (d)(2) of its update to Section 5194 and remain consistent with GHS. Likewise, additional testing requirements over that of federal OSHA would still maintain a California standard that is “at least as effective” as the federal rule. Cal/OSHA will, however, need to explicitly state the nature of the testing it wishes to require. We look forward to a full discussion of this issue.

In closing, we hope these comments are helpful to Cal/OSHA’s and the Standards Board. We expect that the conversations and presentations at the April 9th meeting will trigger more ideas about these and other improvements. We will be happy to submit additional comments about these after the meeting.

SEIU will continue to participate in this process. Please let us know about future consultations, meetings, and opportunities to participate and contribute to Cal/OSHA’s and the Standards Board’s deliberations about this very important issue.

Sincerely,



Mark Catlin
Industrial Hygienist
SEIU
1800 Massachusetts Ave, NW
Washington, DC 20036
(202) 730 – 7290
mark.catlin@seiu.org